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C O N F I D E N T I A L SECTION 01 OF 02 THE HAGUE 003323

SIPDIS

DEPARTMENT FOR S/WCI - PROSPER/RICHARD, EUR - STEPHENS;
EUR/SCE - GREGORIAN/MITCHELL, L - LAHNE/GTAFT, INR/WCAD -
SEIDENSTRICKER/MORIN; USUN FOR ROSTOW/WILLSON

E.O. 12958: DECL: 1.6 FIVE YEARS AFTER CLOSURE ICTY

TAGS: [BK](#) [HR](#) [KAWC](#) [NL](#) [PHUM](#) [PREL](#) [SR](#) [ICTY](#)

SUBJECT: ICTY: TRIBUNAL RESISTS UN/GC EFFORT THAT WOULD
DELAY TRIALS

Classified By: Legal Counselor Clifton M. Johnson per 1.5(d).

1. (C) Summary: President Theodor Meron of the International Criminal Tribunal for the former Yugoslavia (ICTY) told Embassy legal officers on December 21 that the UN Secretariat is resisting his efforts to appoint two ad litem judges to trials in dire need of immediate appointments. Meron shared a letter from Assistant Secretary General for Legal Affairs Ralph Zacklin in which Zacklin says he "would not feel able to advise the Secretary-General to proceed to appoint" the two judges at this time. Meron has responded by noting that, if the Tribunal is to remain on the completion strategy targets, there is no alternative to making these appointments now. If the appointments are not made, two key trials could slip by six months. Meron is consulting with other P-5 representatives in The Hague and believes that support from the USG to reverse Zacklin's position would be of great assistance. (Meron-Zacklin correspondence faxed to IO, S/WCI and L.) End summary.

2. (C) In similar letters dated December 14, President Meron requested that UNSYG Annan appoint ad litem judges in Prosecutor v. Krajisnik (from which a permanent judge recently stepped down) and Prosecutor v. Halilovic (expected to commence in late January). (NB: Article 13 ter of the Statute of the Tribunal requires the President to request such appointments of the UN Secretary General.) ASG Zacklin resisted Meron's request in a letter dated December 17. He argued that because the subject trials are not expected to be completed by the expiration of the ad litem judges' terms, in June 2005, he would first want the Security Council and General Assembly to extend the terms of the judges. He also makes an extended argument suggesting an appointment could not be made to the Krajisnik trial before the trial and appeals chambers resolve the question of whether a substitute judge may, in any event, sit on the trial without it starting over from the beginning.

3. (C) Meron shared with embassy legal officers his response to Zacklin, dated December 21. His response notes that Zacklin's approach would, in all likelihood, result in significant delay (he estimates six months) of both trials, leading to an interruption in the progress of the ICTY completion strategy. He also notes that the Tribunal and UNSYG Annan have repeatedly authorized similar ad litem appointments in the past, appointing judges to trials as the need arises and addressing later, when the end date of a trial is clearer, the question of extension of terms. Indeed, at this time it is wholly speculative as to when the Krajisnik and Halilovic trials are likely to end, making it impossible to predict the appropriate length of an extension. Meron further advised embassy legal officer on December 22 that the Krajisnik defense team has decided not to appeal the appointment of a substitute judge in the case, thus removing one of Zacklin's principal objections to appointment of an ad litem to that trial chamber. Meron also noted that Zacklin's boss, Under Secretary General for Legal Affairs Nikolas Michel, had been left completely in the dark by Zacklin's approach; in turn, Meron suggested that Michel may be sympathetic to the request for the ad litem judge appointments.

4. (C) Comment: Meron has the much better argument over Zacklin in this dispute: delay in appointing the two ad litem judges would undoubtedly delay the trials and thus undermine the completion strategy, while appointing the judges now in no way interferes with the Security Council's discretion to extend the appointments when that becomes necessary (as it likely will). Zacklin's approach is neither legally required nor does it make practical sense -- why distract the SC or GA with an issue that does not require their action now and, given that ICTY trials usually take a year or more, what alternative does the ICTY have to using ad litem judges in such cases? Indeed, given the weight of argument in Meron's favor, one wonders whether this is less a case of a genuine legal question being raised than another manifestation of Zacklin's antipathy towards the ad hoc war crimes tribunals. At any rate, U.S. support for Meron's position, together with support from other P-5 representatives (nb: we understand that the UK will be making such an approach to Zacklin or Michel), would bolster his arguments on the merits. Embassy

believes that such an approach to Michel, aligning the USG in particular with the arguments about the damage to the completion strategy, would help ensure that UNSYG Annan makes these appointments without undue delay. End comment.
SOBEL